the bank did not plead to said affirmative defense but stood in default for six months, or until December 12, 1934, when, without notice, it obtained an order to file an amended petition (R. 31-32), which was a pleading complete within itself, without reference to the original petition, and stated a cause of action based solely upon a foreign judgment, to-wit, the Kansas judgment, duly authenticated in accordance with the federal statute. This pleading being complete within itself, superseded the original petition and the original petition no longer constituted a part of the record under the statutes and settled law of Oklahoma. (See *Lane* v. *Choctaw O. & G. Co.*, 19 Okl. 324, 91 Pac. 833, and other cases cited in supporting brief, pp. 17-18.) Petitioner, within twenty days, or January 2, 1935, filed a motion to strike said amended petition (R. 75), which motion came on for hearing February 4, 1935, and the court struck said pleading (R. 75). Respondent excepted to the order of the court but did not appeal.

Petitioner denies any responsibility for the immediate delay thereafter, as the record discloses respondent acquiesced in such order striking the pleading for nine months, at which time the statute of limitations (subdivision 4, section 101, O. S. 1931) had run on the Kansas judgment and the mortgages were extinguished (section 10957, O. S. 1931) by lapse of time, but permitted the action to remain dormant until November 6, 1935, when the respondent filed a motion (R. 76) to reconsider the previous order (R. 75) striking the amended petition and to treat it as a supplemental petition.

Notwithstanding the unwarranted, grave innuendoes and flagrant misstatements in the response, it is believed they are of little importance in determining the question

before this Honorable Court, which is: Have the rights granted the petitioner by the equal protection clause of the Fourteenth Amendment been violated?

Reply to Argument and Authorities.

Respondent persists in being inaccurate and on page 4 of the response, under the heading, "Argument and Authorities," asserts: "This being an ordinary action for personal judgment on a promissory note," although the amended petition upon which this judgment was rendered (R. 32) makes no reference to a promissory note, but is an action based solely upon a foreign judgment.

In our petition for writ of *certiorari* and brief in support thereof we attempted to make it clear that under the statutes of Oklahoma and the uniform decisions of the Supreme Court of said state which have not been reversed, modified or overruled, it is the settled law, *(a)* that upon judgment being rendered on a promissory note the cause of action is wholly extinguished and terminated (original brief, pp. 9-10); *(b)* that a cause of action on a foreign judgment constitutes a separate and independent cause of action (original brief, pp. 11-12); *(c)* a cause of action on a foreign judgment cannot be prosecuted by supplemental petition to an action on a promissory note, where the note was the basis of said judgment (original brief, pp. 13-18).

The petition presents the proposition that the opinion of the Supreme Court of Oklahoma in the instant case, without overruling, modifying or reversing said decisions as to the settled law of this state, denies to the petitioner the equal protection of the law, in that it holds that the statutes mean one thing for some persons and another for others similarly situated. Respondent, in response to said

proposition (though it asserts the opinion does not have that effect) does not attempt to discuss the decisions cited and relied upon by petitioner nor refer to any decisions to the contrary, but takes the bold position that even if the opinion does have the effect of holding that as to certain litigants the statute and former decisions of our court mean one thing and as to petitioner mean another thing, nevertheless there is nothing petitioner can do about it, or otherwise stated, that the court could acquire jurisdiction of the subject-matter of an action on a foreign judgment against petitioner without prosecuting an independent action thereon at the instance of respondent, even though it could not acquire such jurisdiction without the institution of such an independent action thereon at the instance of any other litigant or against any other defendant.

Respondent further contends that the judicial branch of the state may deny to persons similarly situated the equal protection of the law as guaranted under the Fourteenth Amendment to the Constitution of the United States, and, if the court does deny the equal protection of the law under said amendment to the Constitution, there is no remedy. In support of that theory they cite *Erie R. R. Co.* v. *Tompkins*, 304 U. S. 64 to 92. A reading of this case discloses it has no application to the facts or record in the case at bar, nor was the constitutional question here involved either presented, considered or decided by this court in that case. The cause of action in said case originated in the state court and was removed to the federal court by reason of diversity of citizenship and the only question therein was whether the federal court upon removal was bound by the laws of the state, or whether it was free to disregard the rulings of the state court and to decide the question con-

trary to the decisions of said state court. The decision in said case is not in conflict with the rule announced by this court in the cases cited in our petition and supporting brief, pages 20-21, to the effect that a state court may not construe a statute to mean one thing for some litigants and another for others, and that such a construction does constitute an infringement of the constitutional rights guaranteed under the Fourteenth Amendment to the Constitution of the United States.

Conclusion.

The petition for writ of *certiorari* is a challenge to the constitutional validity of the ruling in this case whereby the statutes of Oklahoma are adjudged to mean one thing for some cases and another thing for others. This challenge clearly presents a federal question within the Fourteenth Amendment to the Constitution of the United States.

The response concedes, except by mere denial without more, the ruling challenged has the force and effect as contended for by petitioner, but assumes the bold position that the courts of the various states are at liberty to adjudicate statutes to mean one thing in some cases and another in others, depending upon the whim or caprice of the courts; and although said ruling constitutes a discrimination, the party discriminated against is without remedy, as no federal question is involved, even though said challenged ruling has the force and effect of a denial of the equal protection of the law guaranteed under the Fourteenth Amendment to the Constitution of the United States.

The question herein presented, considered in the light of the reponse, is of great public importance, for, if the law is as contended by respondent, the Fourteenth Amendment to the Constitution is stricken down as meaningless and the equal protection clause contained in the Fourteenth Amendment to the Constitution is made a mere scrap of paper and the rights guaranteed thereunder are unenforceable for want of a remedy.

It is, therefore, respectfully submitted that *certiorari* should issue.

Respectfully submitted,

NEAL E. MCNEILL,
Thompson Bldg.,
Tulsa, Okla.,
Counsel for Petitioner.

W. VALJEAN BIDDISON,
Of Counsel.

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No. 271

In the Supreme Court of the United States

October Term, 1941.

J. T. SMITH, *Petitioner,*

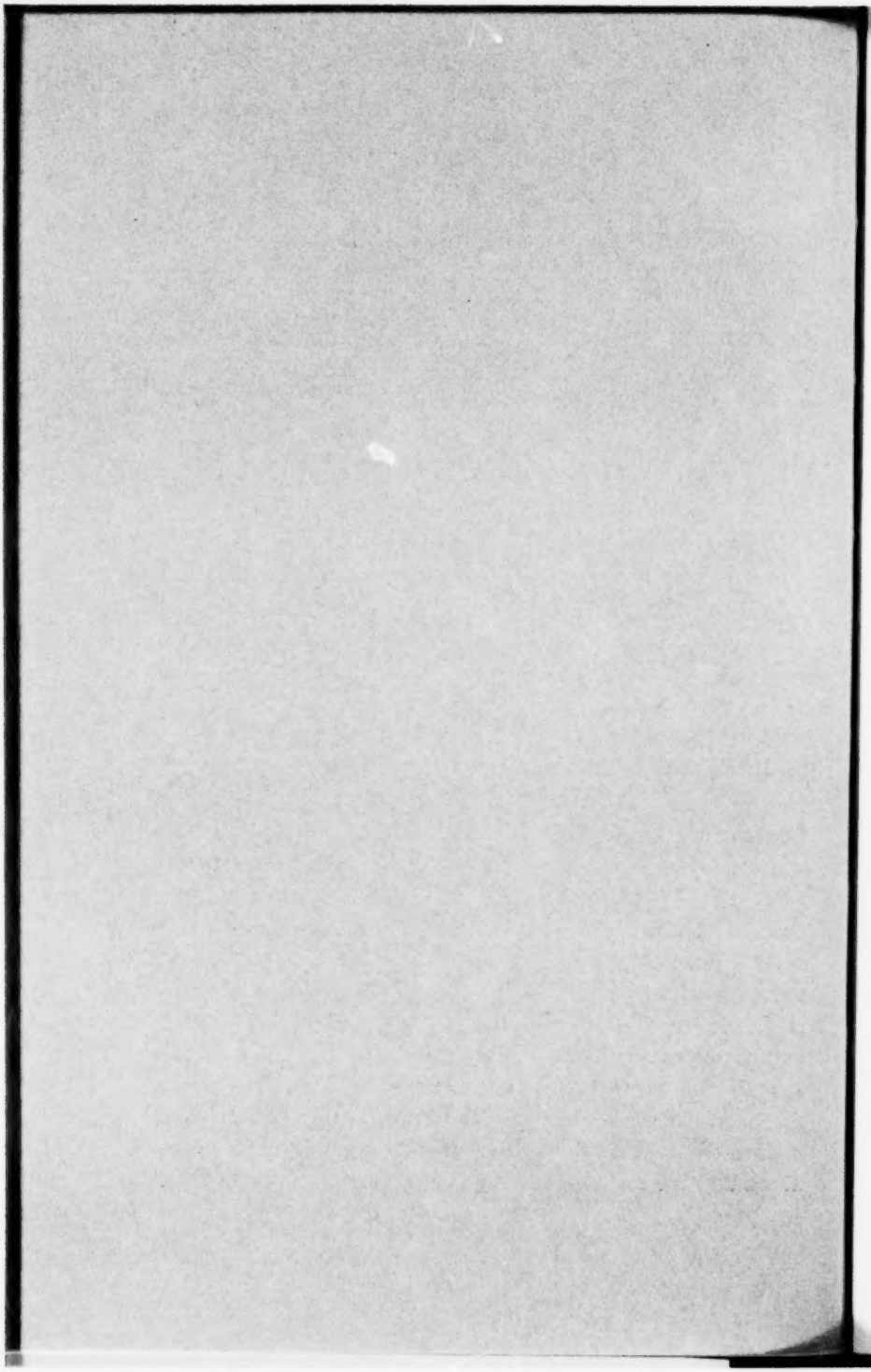
vs.

THE FOURTH NATIONAL BANK OF TULSA.

MOTION TO TAX COSTS.

NEAL E. McNEILL,
Solicitor and Attorney for Petitioner.

W. VALJEAN BIDDISON,
Of Counsel.



IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1941.

No. 271

J. T. SMITH, *Petitioner,*
vs.
THE FOURTH NATIONAL BANK OF TULSA.

MOTION TO TAX COSTS.

Comes now the petitioner, J. T. Smith, and represents and shows to the court that the respondent, The Fourth National Bank of Tulsa, has, through its attorneys of record herein, necessitated the printing of practically the entire transcript of the record of this cause from the Supreme Court of the State of Oklahoma when the printing thereof was wholly unnecessary, the only necessary portion thereof being as set out in the proposed stipulation as to omissions from the printed record, as attached hereto and made a part hereof, same being marked "Exhibit B," which stipulation petitioner urged the respondent to enter into, all as hereinafter set forth; that the matter covered by said proposed stipulation would have been ample and sufficient to present to this court the entire matter arising on petitioner's petition for a writ of *certiorari* herein and the printed record in this court could have been thereby very materially reduced and the cost of printing the same very materlally re-

duced, the exact amount, however, not being known to petitioner;

That W. Valjean Biddison, hereinafter referred to as affiant, is and was at all the times herein mentioned one of the attorneys for J. T. Smith, the petitioner herein in the Supreme Court of the State of Oklahoma in the above cause, and one of the counsel for said petitioner herein; that on the 14th day of June, 1941, he submitted to G. C. Spillers one of the attorneys and solicitors for respondent, The Fourth National Bank of Tulsa, the attached designation of points relied upon, marked "Exhibit A," and made a part hereof, and the attached proposed stipulation as to omissions from the printed record, marked "Exhibit B" and made a part hereof, and requested said attorney to enter into said stipulation in connection with the petition for *certiorari* of said J. T. Smith, same having been duly executed by N. E. McNeill and said W. Valjean Biddison, as attorneys and solicitors for petitioner, and at the same time delivered to said G. C. Spillers copies of each of said documents, and simultaneously therewith affiant tendered to said attorney and solicitor for respondent the original transcript of the record from the Supreme Court of Oklahoma in said cause, which was subsequently filed in the above entitled court and cause, for his use in consideration of said proposed stipulation; that said G. C. Spillers then stated to affiant that he or his associates would later indicate to affiant whether they wanted to make use of said transcript of the record;

That thereafter and on June 16, 1941, Chas. L. Yancey, law partner of said G. C. Spillers and one of the attorneys and solicitors for respondent, stated to said affiant that respondent would not stipulate as to the portion of the transcript of the record to be omitted or to be printed and would not enter into said stipulation, and further said to him, "You had better go ahead and put in what you want," and

that respondent "wanted it all in"; that thereafter and subsequent to the filing of said transcript of the record herein and on June 19, 1941, said W. Valjean Biddison again delivered to said Chas. L. Yancey, as such attorney and solicitor, a copy of said designation of points relied upon and of said stipulation as to omissions from the printed record, and again requested the respondent to enter into said stipulation and the said Chas. L. Yancey again stated to said affiant that respondent would not enter into said stipulation and that he wanted the entire transcript of the record printed. Said affiant thereupon stated to the said Chas. L. Yancey that, as shown by the said statement of points relied upon, the petition was predicated upon the proposition that the Supreme Court of Oklahoma had denied petitioner the equal protection of the law and that there was much of the transcript of the record which was wholly unnecessary to a presentation of that question to this court and advised him of the clerk's estimate of the cost of printing the record in the absence of a stipulation, to-wit, the sum of $525.00, and said attorney and solicitor still declined to enter into any stipulation and declined to propose any stipulation, although said affiant asked him whether he desired to propose any stipulation.

Wherefore, petitioner prays the court to determine what portion of the transcript of the record should have been printed and was necessary to make up the printed record herein and the cost of printing same, and to tax any excess cost incurred in printing the record herein against the respondent, The Fourth National Bank of Tulsa.

.....,

NEAL E. MCNEILL,
Solicitor and Attorney for Petitioner.

.....,

W. VALJEAN BIDDISON,
Of Counsel.